

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15677 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHAMJI RAJA BUDHRASANIYA (SORATHIYA)

Versus

ANJAR MUNICIPALITY

Appearance:

1. Special Civil Application No. 15677 of 2003
MR SHAKEEL A QURESHI for Petitioner No. 1
MR YS MANKAD for Respondent No. 1
MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P
for Respondents nos. 2 and 4
MR NIKHILESH J SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 04/08/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned advocate Shri Y.S. Mankad for respondent no.1, by learned A.G.P. Ms Maithili Mehta for respondents nos. 2 and 4 and by learned advocate Shri N.J. Shah for respondent no.3. At the request of the learned advocates, the petition is finally heard today.

2. The grievance of the petitioner is that in pursuance of Town Planning Scheme No. 4 made for Anjar city, upon reconstitution of his plot bearing Survey No. 438, he is losing substantial construction put up on his land because of widening of the road. It has been prayed in the petition that the proposed road should not be widened. The petitioner has been asked to vacate the land, which is to form part of the road and, therefore, the petitioner has approached this Court with a prayer that the respondents should be restrained from directing the petitioner to vacate the land in question.

3. Learned advocate Shri S.A. Qureshi appearing for the petitioner has submitted that the petitioner was an owner of land bearing Survey no. 438, situated at Anjar, admeasuring 36.65 sq meters. In the process of making the town planning scheme, the said survey no. has been converted into original plot no. 111 and, ultimately, in lieu of his original plot no. 111, Final Plot no. 111 admeasuring 25.66 sq meters has been allotted to the petitioner.

4. It has been submitted by him that in the said process, the petitioner would be losing 10.99 sq meters of his land and the construction put up on the said land will also have to be demolished. It has been submitted that because of demolition of a portion of his building, possibly his entire building might become useless and that would result into great loss to the petitioner. It has been thereafter submitted by the learned advocate that size of his original plot has been reduced because the respondent authorities have decided to widen the road, which is on the eastern side of his house. It is the case of the petitioner that it is not at all necessary to widen the road. According to him, the road, which was in existence before making the scheme, was having sufficient width and, therefore, the respondent authorities should be directed not to widen the road as, due to widening of the road, a portion of the petitioner's building, which is in good condition, will have to be demolished. Thereafter, it has been submitted by the learned advocate that the petitioner had made a representation against the widening of the road but the said representation has not been considered by the

respondent authorities.

5. It has been further submitted by him that as per the normal policy of respondent no. 1, no deduction is to be effected from an original plot, which admeasures less than 70 sq meters. It is not in dispute that the size of original plot no. 111 was 36.65 sq meters and, therefore, according to the aforestated policy of respondent no. 1, no portion of land should have been deducted from the petitioner's plot. It has been submitted that the respondent authorities have digressed from the said policy in the instant case, and thereby, they have acted in an arbitrary manner.

6. The learned advocate has submitted that except the petitioner, no other person, having a similar size of plot, is losing any land. Thus, the petitioner has been given discriminatory treatment and thereby his fundamental right guaranteed under Article 14 of the Constitution of India has been violated.

7. On the other hand, the learned advocates appearing for the respondents have submitted that in the process of making the town planning scheme, the roads of Anjar town are being widened. It has been submitted that respondent no. 3 authority has been constituted for making a town planning scheme, with an object of rehabilitation of the residents of Anjar city as well as for having better infrastructure including roads etc. for Anjar city. It has been submitted that the road, which is on the eastern side of the petitioner's house was very narrow and the said road was not enough for having easy access to vehicular traffic. Moreover, the petitioner has also made encroachment on the eastern side of the building i.e. on the road, which has further reduced the actual size of the road.

8. It has been further submitted that as a matter of policy, it has been decided by respondent no. 3 to have all the roads with width of atleast 6 meters in Anjar city. In pursuance of the said policy, the road has been widened and according to the respondents, in the interest of the public at large, wider roads are required in Anjar city.

9. It has been further submitted that in spite of due publicity given to the draft town planning scheme and the preliminary scheme, the petitioner did not submit any objection at the relevant time. For the first time after the preliminary scheme had been sanctioned on 21.01.2003, under the provisions of Section 65 of the Gujarat Town

Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"), the petitioner filed an objection on 25th September, 2003. It has been also submitted that no objection had been submitted by the petitioner even before the draft town planning scheme had been sanctioned under the provisions of Section 48(2) of the Act. It has been therefore submitted that the objection, which had been filed after 25th September, 2003, could not be considered, especially when the scheme had become final and had become part of the Act.

10. With regard to deduction in Final Plot, it has been submitted by learned advocate Shri N.J. Shah appearing for respondent no. 3 that it is true that as per the guidelines or as per the normal policy laid down by respondent no. 3, normally, no deduction should be effected from a plot, which admeasures less than 70 sq meters but looking to the peculiar facts and situation of the plot, respondent no. 3 was constrained to allot Final Plot admeasuring 25.66 sq meters to the petitioner. The learned advocate has drawn my attention to the map, which is at page 59, which shows that there is no possibility, whereby the petitioner can be given same size of plot elsewhere. It has been submitted by him that the petitioner has put up complete construction and, therefore, there is no question of giving him same size of plot elsewhere because, in that case, the petitioner would be losing his entire building.

11. I have heard the learned advocates and have also perused the affidavits and the map showing the actual position of the land, which originally belonged to the petitioner, and the Final Plot, which has been allotted to the petitioner.

12. Upon perusal of the map, it is clear that the petitioner had made encroachment on the public street by putting up construction thereon. It also appears that the road proposed to be constructed under the scheme is very much required. It may be noted here that whether to plan a road of a particular width is the subject matter of an expert and normally, as per the settled legal position, this Court would not like to examine the correctness or otherwise of the decision of the officers concerned with the planning of a city. In the instant case, however, it is very clear that the existing road was extremely narrow and even on that narrow road, the petitioner had made an encroachment. The petitioner has to suffer a little more because of the encroachment, which he had made. On account of his encroachment, some portion of his building will have to be demolished. Had

the petitioner not made any encroachment on the public street, possibly, he would have had to demolish lesser portion of his building.

13. It is irrelevant whether the condition of the building constructed by the petitioner is good or bad, when the land in question is required for the purpose of widening of the road. Whatever construction has been put up on the land, which is to be used for road, will have to be pulled down by the respondent authority. It is unfortunate that in the process some construction put up in a legal manner will also have to be demolished. In the process of planning, very often, some construction is demolished, in the interest of public at large. If, for the purpose of widening of the road, or for any other common purpose, land is required to be reserved, the owner of the building or the land has to part with his possession, in accordance with law.

14. So far as deduction from the land allotted to the petitioner is concerned, it is true that respondent no. 1 has digressed from its normal policy. I have carefully considered the map, which is at page 59, and the submissions made by learned advocate Shri Shah appearing for respondent no. 3, which appears to be absolutely correct. It would be extremely difficult to allot a plot of the same size to the petitioner. Moreover, allotting a plot at a different place would result into loss to the petitioner because in that event, the petitioner would be losing his entire construction and that would not be in his interest. By giving the land on the eastern side would reduce the width of the road, which cannot be done. If the petitioner is given additional land on any side of the building, it would not be possible for the petitioner to put up further construction because, such construction would surely violate the present building policy and, therefore, though some loss has been suffered by the petitioner, there appears to be justification on the part of respondent no. 3. Looking to the peculiar facts and situation of the plot of the petitioner, even respondent no. 3 authority was helpless and, therefore, the petitioner is made to suffer loss to the tune of 10.99 sq meters of land. Of course, the petitioner will be duly compensated in terms of money for the said loss.

15. Though it is true that the respondent authorities have digressed from its policy but looking to the peculiar facts, it would not mean that the right of the petitioner guaranteed under Article 14 of the Constitution of India has been violated.

16. In spite of all possible efforts, and the efforts even which were made in the Court with the help of the concerned Officers, it appears that it is not possible to help the petitioner by avoiding demolition of a portion of his building, or allot him plot of a same size at a different place.

17. In the instant case, the petitioner will have to give possession of a portion of his land. Of course, it has been submitted on behalf of the learned advocates appearing for the respondents that the petitioner is to be duly compensated for the loss, which he would suffer. A sum of Rs. 29,596/- will be awarded to the petitioner because the petitioner is to suffer loss.

18. If, in the opinion of the petitioner, the amount of compensation is less, it is always open to the petitioner to challenge the quantum of compensation determined by the concerned authority, in accordance with law.

19. Looking to the facts of the case, it is clear that no legal or fundamental right guaranteed to the petitioner has been violated. The petition is therefore rejected. Rule is discharged with no order as to costs.

(A.R. DAVE, J.)

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